

AMERICAN ARBITRATION ASSOCIATION

In the Matter of the Arbitration Between

**FRATERNAL ORDER OF POLICE,
LODGE #5**

OPINION & AWARD

-- and --

**Case No. 14-20-1300-1595
Termination of Sgt. Beasley**

CITY OF PHILADELPHIA

ARBITRATOR: James M. Darby, Esq.

APPEARANCES: For the FOP:
Mark L. Gelman, Esq.
Jennings Sigmond, P.C.

For the City:
Nicole S. Morris, Esq.
Division Deputy City Solicitor

This case arises out of the City of Philadelphia's ("the City") termination of Sergeant Demetrius Beasley ("the Grievant") on August 5, 2013, for conduct unbecoming an officer. The Fraternal Order of Police, Lodge #5, filed a grievance on September 12, 2013, alleging that there was no just cause for the Grievant's termination. The parties were unable to resolve the grievance.

By letter dated September 26, 2013, from the American Arbitration Association ("AAA"), the undersigned was notified of his selection as Arbitrator

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of this dispute. A hearing was held on September 19, at the AAA offices in Philadelphia, Pennsylvania, where the parties were afforded a full opportunity to present testimony, exhibits and arguments in support of their positions. The parties presented oral closing statements in lieu of filing post-hearing briefs, after which the record was closed. After fully considering all of the evidence and arguments presented, the matter is now ready for final disposition.

QUESTION TO BE RESOLVED

At the commencement of the hearing, the parties stipulated to the following issue to be resolved by the Arbitrator:

Whether the City had just cause to terminate the Grievant, Sgt. Demetrius Beasley? If not, what shall the remedy be?

REMEDY REQUESTED

The Union requests that: 1) the grievance be sustained; 2) the Grievant be reinstated and made whole; 3) any record of his discipline be expunged; and 4) the Arbitrator retain jurisdiction for the purposes of resolving any disputes over the implementation of the Award.

BACKGROUND

The Grievant was hired by the City Police Department (“the Department”) on October 29, 1990. He owns the residence at [REDACTED] in Philadelphia, and has resided there for 23 years. The Grievant is the customer of record for electric, water and gas service for the home. The Grievant also owns seven rental properties in the City.

The Grievant was terminated for stealing water, gas and electric utility services. Specifically, the City found him guilty of violating the Department’s Code of Conduct, specifically: CONDUCT UNBECOMING, Section 1-§026-10 of, which prohibits officers from “[e]ngaging in any action that constitutes an intentional violation of Chapter 39 of the Crimes Code (relating to Theft and Related Offenses).” This provision provides for disciplinary action regardless of a criminal conviction or the pendency of criminal charges. (Joint Exhibit 2.)

The facts leading up to the instant charges are as follows. Sometime in April and early May 2011, the Philadelphia Water Department Revenue Section (“the Water Department”) discovered that the water meter at the Grievant’s home did not register any usage for the prior 12 months. Water Department Investigator J[REDACTED] V[REDACTED] visited the Grievant’s residence on April 27, 2011. The Grievant was not at home, but a female arrived while V[REDACTED] was at the house and gave V[REDACTED] “the owner’s” phone number. (City Exhibits 3, 5, 12, 15.)

On May 10, 2011, V█████ called the number and a male answered the phone inquiring why V█████ needed access to the home and asking why he could not provide V█████ whatever information he needed over the phone. After V█████ insisted he needed to gain access to the house, the male stated he was not the owner, that the owner was out of town, and that he would have the owner call V█████ when the owner returned. Sometime thereafter, the Grievant called V█████ back and scheduled an appointment for V█████ to access the residence on May 20, 2011. (*Id.*)

When V█████ entered the home on May 20, 2011, he found that the meter was operating normally, but that the tamper-evident wire seal was missing. The meter showed three cubic units of water usage over the amount it had constantly registered for the previous year, and V█████ determined that such usage occurred after he spoke to the male who answered the owner's phone on May 10, 2011. V█████ installed a new wire seal to deter further tampering. (*Id.*) V█████ testified that he concluded from these circumstances that the meter had been removed, tampered with, and reattached at some point prior to his arrival.

The record shows that between May 27, 2010 and April 28, 2011, the Water Department received only monthly service charges for the residence in the amount of \$23.00. Beginning in May 2011, after the Water Department contacted the Grievant and the meter began to register usage, a water bill was paid in the amount of \$38.98. (City Exhibit 15.)

After learning from V [REDACTED] about problems with respect to the Grievant's water bill, the Department contacted Philadelphia Gas Works ("PGW") and Philadelphia Electric Company ("PECO"). PGW investigated and determined that the Grievant's account showed no gas usage for over a year. PGW Investigator C [REDACTED] F [REDACTED] visited the Grievant's home on May 16, 2011 and was provided access by the Grievant's girlfriend. Upon inspection, PGW discovered that the gas meter had been tampered with so that it would not record any gas usage. Specifically, the altered meter allowed the Grievant's to receive \$1,630.10 of gas free of charge between April 22, 2010 and May 16, 2011. During this time period, the Grievant was only billed for the monthly \$12.00 service charge. (City Exhibits 2, 6, 8, 8a-8b, 12, 15.)

PECO Investigator J [REDACTED] R [REDACTED] inspected the outdoor electric meter at the Grievant's home on May 16, 2011. The meter was not turning, but lights were on in the house. R [REDACTED] removed the meter and found that it had been tampered with the use of, among other things, "shut off boots," which allowed the electric current to bypass the meter. This created a significant fire hazard and allowed the Grievant to receive electric power without the service registering on the meter. (City Exhibits 12, 15-17.)

Prior to May 2010, the electric usage at the Grievant's home was consistent with other homes on the street (averaging \$99 per month, \$115 during the summer months). Between May 2010 and April 2011, the average electric bill

was between \$5 and \$20 per month. This resulted in a theft of service of \$1,330.70. (City Exhibit 15.)

Police Commissioner Charles Ramsey testified that two other police officers, Officer George Suarez and Lieutenant Aisha Perry, were both terminated for tampering with utility meters. On cross-examination, the Commissioner distinguished the instant situation from circumstances involving police officers who were suspended without pay for stealing Low Income Heating and Energy Assistance Program (LIHEAP) benefits. Unlike the present case, the officers there pled guilty before the Police Board of Inquiry. Commissioner Ramsey also stated that the LIHEAP cases did not involve tampering with utility meters.

The Grievant testified that he is the sole owner of the residence at [REDACTED] [REDACTED], and that the gas, electric and water utilities are all in his name. He has lived there for 23 years, the last ten years with his wife (who was his girlfriend in 2011). The Grievant testified that his wife pays all of the utility bills for the house. He never sees the utility bills. The Grievant denied that he tampered with any of the utility meters. He stated that he, his wife and [REDACTED] [REDACTED] daughter were the only individuals who had access to the home in 2010-2011. After he was terminated, the Grievant learned from his wife that she was “involved” with the tampering of the meters. The Grievant’s wife did not testify at the hearing.

On March 20, 2013, the District Attorney's Office informed the Department that it was not going to prosecute the Grievant for theft of services (City Exhibit 11). According to Internal Affairs Division Lieutenant Lorraine Dusak, this decision was based on the fact that the Grievant reimbursed the utilities for all of the water, gas and electric services used. The record also shows that utility meters at one of the Grievant's rental properties were also tampered with, but the Department was unable to attribute such misconduct to the Grievant.

DISCUSSION

The parties' positions can be briefly summarized.

The City contends that it had just cause to terminate the Grievant for conduct unbecoming an officer. Tampering with utility meters constitutes serious misconduct. Although the Grievant claims he was not responsible for the meters being tampered with, he was the customer of record and should have been aware of this wrongdoing. According to the City, "plausible deniability" cannot excuse a police officer's misconduct, who is held to a higher standard. The Grievant did not claim his wife was responsible until after he was terminated, which seriously compromises his credibility. The City also insists that the Grievant's status as a landlord of seven other properties conflicts with his being "clueless" regarding the utilities at his own house.

The Union argues that since the misconduct involves alleged criminal behavior, the City must meet its burden of proof by “clear and convincing” evidence here. It insists that there is no direct evidence that the Grievant tampered with the utility meters at his home. It is undisputed that the Grievant’s wife handled all of the utility bills, and the City has presented no evidence that the Grievant “knew or should have known” he was not being charged for utility services. The Union emphasizes that the Grievant denies having tampered with the meters himself, and he told investigators that his wife paid all of the bills. The Department never interviewed his wife, and it has failed to prove that the Grievant is culpable in any way. The Union also points out that officers who pled guilty to stealing LIHEAP benefits only received suspensions without pay.

The undersigned must determine whether just cause exists for the Grievant’s termination. It is undisputed that: 1) the Grievant owned the residence at [REDACTED]; 2) the Grievant was the customer of record with respect to the gas, water and electric bills; 3) the gas, water, and electric meters at the Grievant’s residence were tampered with; 4) no one other than the Grievant, his wife and [REDACTED] daughter had access to the premises; and 5) as a result of the tampering, the Grievant received thousands of dollars in free utility service.

In addition to the foregoing, the record shows that when V [REDACTED] was attempting to inspect the Grievant's water meter, he was initially denied access to the house by a "male" who answered "the owner's phone." The "male" pressed V [REDACTED] as to why he could not provide V [REDACTED] with whatever information he needed over the phone, rather than inspect the property. After V [REDACTED] insisted that he needed to access the property, the "male" told V [REDACTED] that the owner was "out of town" so the inspection could not take place at that time. When V [REDACTED] finally was allowed entry by the Grievant, the water meter's tamper-proof seal was missing and it was registering water usage for the first time in a year.

Under the totality of these circumstances, the Grievant cannot credibly plead ignorance of the fact that he was receiving free utility service for a full year. I conclude that it was reasonable for the Department to conclude that the Grievant knew that the meters had been tampered with.

In any event, as the owner of record of the property and the customer of record with the Water Department, PECO and PGW, the Grievant should have known that something was awry with his utility bills and cannot now blame his wife for his predicament. It is telling that the record is devoid of any evidence that he took steps (either as a citizen or a police officer) to investigate the circumstances surrounding the tampering of his meters after his home was inspected by investigators in May 2011. He did not raise any issue concerning his wife's alleged involvement with the same until this arbitration hearing over three

years later. Given that his employment is at stake, the Grievant's claim of plausible deniability alone cannot be believed, nor can it overcome the strong circumstantial evidence pointing towards his guilt.

The question then becomes whether termination was too severe for the Grievant's misconduct. The record shows that other police officers who engaged in similar misbehavior were terminated from employment. While the undersigned recognizes the Grievant's lengthy tenure and clean work record, these factors cannot be considered a guarantee of continued employment in the face of serious misconduct. The Grievant's after-the-fact payment of what was owed to the utility companies was merely the satisfaction of a debt owed and only came about as a result of his being caught stealing services.

As a member of law enforcement, the Grievant is charged with the responsibility of upholding the law. Misconduct of this type breaches the trust that the Grievant owes to the Department and the public, especially to the latter who dutifully and honestly pay for the utility services they use. Under all of the circumstances here, the undersigned will not second-guess the City's decision to terminate the Grievant's employment.

Accordingly, based on the foregoing the undersigned concludes that the City had just cause to terminate the Grievant. The grievance is denied.

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Consistent with the foregoing discussion and findings, the Arbitrator renders the following

AWARD

The grievance is denied.

The City had just cause to terminate the Grievant, Sgt. Demetrius Beasley.

A handwritten signature in black ink, appearing to read "James M. Darby". The signature is fluid and cursive, with a large, stylized "J" at the beginning.

JAMES M. DARBY
Arbitrator
Lancaster, Pennsylvania
November 26, 2014